

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

9 Steven Michael Fernandez,) No. CIV 08-358-TUC-FRZ (BPV)
10 Petitioner,) **ORDER**
11 vs.)
12 Charles L. Ryan, et al.,)
13 Respondents.)
14 _____

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16 Before the Court for consideration in this matter is the Report and Recommendation
17 of the United States Magistrate Judge, recommending the dismissal of the Petition Under 28
18 U.S.C. § 2254 for a Writ of Habeas Corpus.

19 As set forth in the Court's Order screening this action and the Report and
20 Recommendation, Petitioner Steven Michael Fernandez, confined in the Arizona State Prison
21 Complex-Tucson, filed the Petition at issue, alleging (1) a violation of the Sixth and Eighth
22 Amendments because the "sentence exceeds the statutory maximum allowed by law" because
23 it exceeds the presumptive 6.5-year sentence; (2) a violation of the Sixth and Fourteenth
24 Amendments because the sentencing court abused its discretion by imposing a "sentence
25 contrary to the legislative intent . . . enacted by [the] Arizona legislature;" (3) the state court's
26 failure "to conform with sentencing under Arizona Legislature laws as it pertain to Blak[e]ly
27 and Apprendi violates the 6th, 8th, and 14th Amendment[s] of the U.S. Const., especially
28 when the method of using priors to conform with Blak[e]ly is contrary to Arizona Legislative

1 intent;” and (4) a violation of his Sixth Amendment right to the effective assistance of
2 counsel.

3 Upon screening, the Court ordered Respondents to file a response to the Petition.
4 Respondents filed an Answer to the Petition for Writ of Habeas Corpus. Petitioner did not
5 file a reply.

6 This matter was referred to Magistrate Judge Bernardo P. Velasco pursuant to Rules
7 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and report and
8 recommendation.

9 Magistrate Judge Velasco issued his Report and Recommendation, recommending that
10 the Court enter an order denying the Petition for Writ of Habeas Corpus and dismissing this
11 action in its entirely as untimely under the Antiterrorism and Effective Death Penalty Act of
12 1996, 28 U.S.C. § 22543(d)(“AEDPA”).

13 The Report and Recommendation sets forth the factual and procedural history of
14 Petitioner’s state court proceedings and the conviction at issue.

15 The Report and Recommendation further advised that “[p]ursuant to 28 U.S.C.
16 §636(b), any party may serve and file written objections within ten days after being served
17 with a copy of this Report and Recommendation” and that “[i]f objections are not timely
18 filed, then the parties’ right to *de novo* review by the District Court may be deemed waived.
19 See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

20 No objections were filed.

21 The Court finds, after consideration of the matters presented and an independent
22 review of the record herein, that the Petition should be denied and this action be dismissed
23 as recommended.

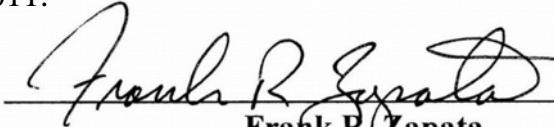
24 Based on the foregoing,

25 IT IS ORDERED that Magistrate Judge Velasco’s Report and Recommendation [Doc.
26 20] is hereby ACCEPTED AND ADOPTED as the findings of fact and conclusions of law
27 by this Court;

28 IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is DENIED;

1 IT IS FURTHER ORDERED that judgment be entered accordingly.
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DATED this 9th day of May, 2011.

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5 **Frank R. Zapata**
6 Senior United States District Judge
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